IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 303 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RANJANBEN D/O KARSHANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 303 of 2000

MR JV JAPEE for Petitioner No. 1

Mr K G Sheth, APP for Respondent No. 1

MR PN BAVISHI for Respondents No. 2-13

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 30/01/2002

ORAL JUDGEMENT

The present revision application under section 397 read with section 401 of the Code of Criminal

Procedure, 1973 (for short, 'the Code') has been preferred by the petitioner above named who was the complainant before the learned Judicial Magistrate First Class at Idar in criminal case no.956 of 1983.

2. The present petitioner had instituted the aforesaid criminal case against respondents no.2 to 13. It was alleged in the complaint that the present petitioner had married with respondent no.2 on 7.2.1988. That the said marriage is still subsisting on the date of the complaint and despite the said position, the second respondent contracted second marriage on 21.6.1993 at about 9 p.m. at village Davad with respondent no.4 and in presence of the remaining respondents no.3 and 5 to 13. That therefore, all the said respondents have committed offence punishable under section 494 read with section 114 of IPC and, therefore, they should be dealt with accordingly. The aforesaid complaint was filed by the petitioner before the trial court and, therefore, the trial court took cognizance of the offence and issued process. This being a private complaint, evidence was recorded, charge was framed and opportunity to recall witness was also given for further cross examination. The remaining witnesses were examined, further statement of the contesting respondents were recorded under section 313 of the Code. Arguments were heard and at the close of the trial, learned Magistrate found that the case against the contesting respondent was not proved and, therefore, he pronounced judgment on 13.4.2000 acquitting of the contesting respondents from the offence punishable under section 494 read with section 114 of IPC.

3. Feeling aggrieved by the said judgment and acquittal order of the learned Magistrate, the petitioner has preferred this revision application before this court. The petitioner has contended before this Court that there was evidence before the trial court to prove the first and second marriage of contesting respondent no.2 and yet the trial court has committed serious illegality in appreciation of evidence and in acquitting the contesting respondents. That therefore, the judgment and order of the trial court are illegal and perverse and the same deserve to be quashed and set aside. The petitioner has, therefore, prayed for settiing aside the said judgment and acquittal order of the trial court. The petitioner has also prayed to direct to issue appropriate warrant against the respondents-accused persons, pending hearing and disposal of this revision application.

4. Rule was issued and in response to the service of

rule, Mr K G Sheth, learned APP appears for the State and Mr P N Bavishi, learned Advocate appears for the remaining respondents. It may be incidentally noted that Mr K G Sheth and Mr P N Bavishi both have supported the judgment and acquittal order recorded by the trial court.

5. Learned Advocate for the petitioner has argued the matter at great length. It has been contended by him that the petitioner has proved the offence against the contesting respondents and yet the acquittal has been ordered by the trial court. It is not much in dispute that the complainant has examined three witnesses before the trial court. The first witness, the present petitioner-Ranjanben Exh.57 is the original complainant before the trial court. It is very clear that she was not present at the time when the second marriage took place. It is her case that she was informed by her brother-in-law Rameshbhai that the second marriage had taken place at village Davad on 21.6.1993. Therefore, the evidence of the petitioner is not useful for proving the charge of offence of second marriage.

6. However, the evidence of the petitioner-Exh.57 clearly establishes existence of the first marriage between the petitioner and contesting respondent no.2. However, this aspect was not seriously disputed by M/s.K G Sheth and P N Bavishi during the course of their argument.

7. The important question apparent is to prove the second marriage. The petitioner has come out with the case that the second marriage of respondent no.2 and 4 took place in Davad Village on 21.6.1993. In support of the case, the petitioner has examined Rameshbhai at Exh.68. This witness has been shown and posed as eye witness to the fact of the second marriage. He has deposed before the court below that he had gone to village Davad and there he noticed that the marriage ceremony was going on. Respondents no.2 and 4 married in the said ceremony in his presence. He had described in details as to how the ceremony took place.

8. At this juncture, it will be relevant to consider the complaint of the petitioner. The petitioner has stated in para 5 of her complaint that her brother in-law Rameshbhai had gone to village Ankala for some social call and during that visit to Ankala, he had come to know that contesting respondent no.2 had contracted second marriage with contesting respondent no.4 Parulben at village Davad. This clerly shows that it was the case of the petitioner right from the beginning that she derived

this information from Rameshbhai. At the same time, it is also an admitted position that the petitioner did not state in her complaint that Rameshbhai was eye witness to the said ceremony of second marriage of respondents no.2 and 4. It is not the case of the petitioner that Rameshbhai had told her that he was present at village Davad when the second marriage ceremony took place between respondents no.2 and 4. In the light of the background of the aforesaid statement of fact made in para 5 of the complaint, the evidence of Rameshbhai at Exh.68 is required to be appreciated.

9. As said above, Rameshbhai has stated before the trial court that he had witnessed the ceremony being performed on 21.6.1993 at village Davad and that respondents no.2 and 4 married at that ceremony in his presence.

10. As said above, this was not the fact conveyed to the petitioner by Rameshbhai as per the statement of fact made in para 5 of the complaint. If the witness was really present at the said marriage ceremony, he would have conveyed the entire proceedings to the complaint and the complainant-petitioner would have, in turn, stated that fact in para 5 of her complaint or somewhere in the complaint. Same way, the petitioner would not have stated in her complaint that Rameshkumar had learnt about the said function when he was on his visit to village Ankala. Learned Advocate for the petitioner has tried to explain that mentioning the name of village Ankala is a typographical error and in fact the petitioner wanted to say that it was village Davad. It is very difficult to accept the said explanation. Firstly, the petitioner has not given evidence about the so-called mistake said to have been committed by her in stating the name of village Ankala instead of Davad in para 5 of her complaint before the trial court. Another aspect of the case is that the said para 5 of the complaint has been subsequently amended after it was typed. Name of Rameshbhai has been subsequently introduced by handwritten entry in para 5 of the complaint of the petitioner. There it was initially stated that the brother-in-law was in Ankala for some social call. Instead, it was added that he had gone to village Ankala for social call. Then it was also added that during the said visit, the information of the second marriage had come to the knowledge of her brother-in-law. Then, even the description of respo0ndent no.4 has been added by handwriting entry in para 5 of the complaint. Even name of the village Davad has also been written by a subsequent addition to para 5 of the complaint. Therefore, if village Ankala was wrongly written in para

5 of the complaint, then at the time, when the name of village Davad was subsequently added by handwriting entry, the complainant or her learned Advocate would have substituted the word Village Davad in place of village Ankala. This has not been done and no explanation has been put forward by the petitioner during the course of her evidence.

11. Learned Advocate for the petititoner has stated that this omission or contradiction was not put to the witness when her evidence was recorded. After all, complaint-exh.1 was the complaint of the petitioner herself. Her verification was recorded on oath before the trial court and, therefore, the petitioner was bound by the contents of this complaint. Therefore, it was not technically necessary for the contesting respondents to put this omission or contradiction during the course of oral testimony of the petitioner and simply because this omission or contradiction was not put to the petitioner during the course of her cross examination, it cannot be said that evidence of Rameshbhai should be accepted.

12. This shows that though Rameshbhai was not cited as a witness having seen the alleged second marriage of respondents no.2 and 4, he has been posed and intrduced as an eye witness to the second marriage for the first time during the course of trial before the trial court. In that view of the matter, evidence of Rameshbhai that he was present when the second marriage took place could not be accepted and the trial court was justified in not placing reliance upon that evidence of Rameshbhai. It is to be seen that Rameshbhai was not a stranger. He was the brother-in-law of the petitioner and, therefore, if he had come to know about the second marriage of respondents no.2 and 4 on 21.6.1993 and the marriage had taken place in his presence, then he would have wasted no time in conveying the said fact to the petitioner. It is an admitted fact that the said fact was conveyed to the petitioner on 22.7.1993. No reason has been assigned for conveying the said information so late to the petitioner. Moreover, if the witness had actually seen the event, he would have given entire details of the ceremony of the second marriage to the petitioner when the said fact was conveyed on 22.7.1993. This has not happened. Moreover, if the entire fact was conveyed by Rameshbhai to the petitioner, then the petitioner would not have omitted to state the said information received by her from Rameshbhai in her complaint. Such a statement of fact is totally absent in the complaint and, therefore, it has to be accepted that the entire case of the complainant that Rameshbhai was an eye witness to the second marriage

ceremany cannot be accepted. The trial court was, therefore, justified in not placing reliance upon evidence of Rameshbhai at Exh.68 for the purpose of proving the second marriage between respondents no.2 and 4.

12. One Popatlal has been examined as third witness. He is a resident of Himatnagar and he is Vice President of Partidar Samaj. A directory and some forms have been produced by him. Entries in the forms show that respondents no.2 and 3 were husband and wife. However, the witness was unable to show how the entries came to be posted in the said directory. It is not his case that respondents no.2 and 4 had presented the forms in question before him. Therefore, the entries in the said directory cannot be said to have been proved before the trial court. So far as the forms are concerned, witness Popatlal is unable to state that the forms were signed by respondents no.2 and 4. Even the complainant has not stated that the said forms bear signature of respondents no.2 and 4. Therefore, those entries in the directory and the execution and contents of the form said to have been presented for making those entries, have not been duly proved by the petitioner before the trial court.

13. Learned Advocate for the petitioner has relied upon a decision of Hon'ble Supreme Court in case of Narottam Singh v. State of Punjab & Anr., reported in AIR 1978 SC 1542. Relevant portion of the said judgment can be gathered from paraa 3 which may be reproduced as under:

> "Discrepancies do not necessarily demolish testimony, delay does not necessarily spell unveracity and tortured technicalities do not necessarily upset conviction when the Court has had a perspicacious, sensitive and correctly oriented view of the evidence and probabilities to reach the conclusion it did. Proof of guilt is sustained despite little infirmities, tossing peceadilloes and peripheral probative shortfalls. The 'scared cows' of shadowy doubts and marginal mistakes, processual or other, cannot deter the Court from punishing crime where it has been sensibly and substantially brought home."

At the same time, it is required to be considered that the offence punishable under section 494 of IPC was permitted to be compounded by the Supreme Court in the said matter and ultimately the appellant-accused was ordered to be acquitted. This aspect is required to be

considered while appreciating the said observations made by the Supreme Court referred to hereinabove.

14. Now, Mr K G Sheth, learned APP has supported the judgment and order and has argued that there is no evidence on record to show that there was really a second marriage in the eye of law between respondents no.2 and 4 and the petitioner has totally failed in proving the fact of second marriage between them.

15. It is required to be noted that the petitioner is a resident of village Raheda. The second marriage is alleged to have taken place in village Davad. Respondents no.2 and 4 were staying in village Ankala. No residents of village Ankala has been examined in order to show that these two respondents have been staying together as husband and wife there.

16. Learned APP has also relied upon a decision of the Hon'ble Supreme Court in the case of Santi Deb Berma v. Kanchan Prava Devi, reported in AIr 1991 SC 816. There it has been laid down that in a case of offence punishable under section 494 of IPC when performance of 'saptapadi' was not proved and it was not a plea that the accused's marriage was performed as per custom which dispensed with saptapadi, then oral evidence and letters to effect that accused and his alleged second wife were living as husband and wife would not be sufficient to draw inference as to performance of ceremonies essential for valid marriage.

17. Mr K G Sheth, learned APP has accordingly argued that even in the present case the petitioner has totally failed in proving the fact of second marriage by adducing materials to show that the ceremonies required to be performed were actually performed and the remaining ceremonies were not required to be performed according to the custom of the caste.

17.1. Another decision is from the case of Bansi Lal & Ors. v. Laxman Singh, reported in AIR 1986 SC 1721. There it has been observed that the revisional powers under section 401 of the Code of this Court are very limited. It is further observed that even in an appeal, the Appellate Court would not be justified in interfering with the acquittal merely on the ground that it was inclined to differ from the finding of fact reached by the trial court on appreciation of evidence. Mr K G Sheth, learned APP has also relied upon another decision in the case of Kaptan Singh v. State of M.P., reported in AIR 1997 Sc 2485. There also the Supreme Court had

considered the provisions made in Section 401 of the said Code and thereafter it has been observed that the trial court had approached the case in a wrong way by entertaining the case only on the result of the report of investigation.

18. In the present case we find that the evidence of the petitioner consists of three witnesses referred to hereinabove only. No further material has been placed in the matter. In that view of the matter, when the fact of the second marriage has not been proved beyond reasonable doubt, the contesting respondent could not be convicted by the trial court. Moreover, it has to be seen that so far as respondent no.2 is concerned, he is the husband of the petitioner and he may have knowledge that his marriage with the petitioner is subsisting. So far as respondent no.4 is concerned, there is no further material to show that she had contracted marriage with second respondent with knowledge or information that the first marriage with the petitioner shall was subsisting when the second marriage was contracted. Similar is the case with respect to other respondents No.6, 8 and others. There is no further material to show that those respondents had knowledge or information about the existence and subsistence of the first marriage between respondent no.2 and the petitioner. In any case, the trial court cannot be said to have committed any error in appreciation of evidence before it. This court cannot reappreciate the said evidence. Learned Advocate for the petitioner as well as the contesting respondents have taken me through the evidence and even on going through the evidence on record, it was found that the trial court has not considered any inadmissible evidence nor any admissible evidence has been overlooked by the trial court. The findings and reasonings of the trial court are not against the weight of evidence on record. In that view of the matter, it is not possible for this court to interfere with the said findings and reasonings recorded by the trial court for arriving at the said conclusion.

For the foregoing reasons, there is no merit in the present revision application and the same is accordingly dismissed. Rule discharged.

30.1.2002 [D P Buch, J.]
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